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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1967

N° 1227

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ROBERT L. STRAUSS,

Petitioner

vs.

T. RALPH GRIMES, Sheriff of Fulton County, Georgia,

Respondent.

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# PETITIONER'S REPLY BRIEF

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CUNNINGHAM & WEINSTEIN
MIAMI, FLORIDA

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T. RALPH GRIMES, Sheriff of Fulton County, Georgia,

Respondent.

# PETITIONER'S REPLY BRIEF

In accordance with the authority contained in Rule 24-4 of the Rules of this Court, the Petitioner respectfully presents this reply brief to one certain argument made by the Respondent in his brief in opposition.

Respondent in his brief (pp. 4, 5) has taken issue with the Petitioner's assertion that his habeas corpus attack was directed to both the Grand Jury and the Petit Jury. Respondent states that

> "the case deals solely with Grand Jurors," (p.5).

While we consider that the matter has been covered in the petition, caution requires us further to answer this contention.

CUNNINGHAM & WEINSTEIN
MIAMI, FLORIDA

It will be recalled that the selection methods testified to by Petitioner's witnesses, related to the method of selection of the "Revised Jury List". (R. 139-140, Petitioner's Exhibit 4). There was no question whatever that this List formed the source of both, the Grand and Petit ("Traverse") Jurors. The only distinction was that up to two-fifths (2/5) of that List were selected as Grand Jurors (Georgia Code §59-106, Appendix 5 to original petition; Petition pp. 4-5; Whitus v. Georgia, 385 U.S. 545, 548).

It is true that Petitioner's statistical evidence related to Grand Jurors. This was only to point out an illegal part of an illegal whole. In Whitus v. Georgia, supra, this Court observed that the showing of actual mathematical disparity between Negroes in the Tax Digest and Negroes on the venires, where significant, were sufficient to make out the prima facie showing of unconstitutional discrimination.

Therefore, while we do not consider it necessary to the Court's disposition of this cause, but in a desire to inform the Court, we attach hereto as an Appendix, a further affidavit of witness Hobbs, who originally testified in this cause (R. 104, et seq.).

This affidavit shows that the percentage of Negroes on the Petit Jury panels, from which the trial jury in this case was drawn, was 5.1% and that no Negroes served on the actual jury.

Respectfully submitted,

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| ROBERT L. STRAUSS,<br><br>Petitioner<br><br>V.<br><br>T. RALPH GRIMES, Sheriff of Fulton County, Georgia,<br><br>Respondent | ) | NO. 1227 |

AFFIDAVIT OF LeROY C. HOBBS

IN PERSON, before me, the undersigned Notary Public, duly authorized to administer oaths, appeared LeROY C. HOBBS, who, upon being first duly sworn, deposes and says:

That is is a practicing attorney in the City of Atlanta, Georgia, with offices at 1317 William-Oliver Building. That he testified as a witness in the Habeas Corpus proceeding brought by one ROBERT L. STRAUSS in the Superior Court of Fulton County, Georgia, under the style of Robert L. Strauss, Petitioner -v.- T. Ralph Grimes, Sheriff, Respondent, being Case No. 1300, in which the manner of composition of the Grand Jury which indicted petitioner was raised by said petitioner.

That in his testimony, deponent gave statistical evidence of the percentage of Negroes appearing in the 1962-1963 Jury List prepared by the County Commissioners of said County, as they related to the Grand Jury which indicted the petitioner, ROBERT L. STRAUSS.

That said statistical information and percentages formed the basis from which the Statistical Table was prepared which said table appears on pages 5 and 6 of the Petition for a Writ of Certiorari to the Supreme Court of Georgia, above styled.

That on May 1, 1968, deponent obtained from the Clerk's Office, Fulton Superior Court, Criminal Division, the original list comprising 16 panels of petit jurors furnished to the Trial Court in which the said ROBERT L. STRAUSS was tried on September 12, 1966 and from which the Petit Jury trying said defendant was selected, showing, among other things, the names of the jurors, those jurors which were excused for cause, those jurors stricken by counsel for the State and those jurors stricken by counsel for the defendant, a copy of which list is attached hereto and made a part hereof by reference.

That from said list attached hereto and identified hereby, deponent took all 184 names of the prospective jurors and examined the 1962, 1963 and 1964 Tax Digests, for the purpose of determining how many of said jurors were white and how many were Negro. (The Tax Digests for said three years all indicating in a separate column the race of all taxpayers named therein).

That as a result of deponent's examination, aforesaid, deponent determined that 160 of said named jurors were of the white race, 11 were Negro and 13 were not identifiable from the Tax Digests at that point in deponent's examination.

Deponent avers that he made an examination of the Telephone Directory, Street Directory and other records available to him for the purpose of determining, if possible, the number of Negroes and whites numbered in the 13 unidentified names. Deponent avers that the result of these efforts indicated that of the 13 unidentified jurors named, 11 were white and 2 remained unidentified as to race.

That based upon 182 identified jurors as to race, and based upon 11 of that number being Negroes, the percentage of Negroes on the proposed jury panels hereinbefore referred to amounts to 5.1%.

That according to said exhibit no negroes served

on the jury of twelve regular and two alternate jurors, which tried defendant Strauss.

LeRoy C. Hobbs

LeRoy C. Hobbs

Sworn to and subscribed before
me this the 1st day of May, 1968

/s/ ALICE S. BROWN

Notary Public, Georgia State at Large
Commission Expires July 9, 1968

Judge Tilley. Friday Morning

PANEL NO. 1

1 EDGAR L RICE C 30
2 S E COURT.
3 H H CHARLES
4 ~~MRS. VIRGINIA THOMPSON~~
5 ~~JEANETT C BROWN~~
6 HUCH W REEVES C 28
7 GEORGE C JONES
8 JOSEPH P GALLAGHER
9 CHARLES G RAY
10 ~~MARCUS V WHITLOCK~~
11 ~~W H ALLEN JR.~~
12 NOLAN P SANCHEZ

PANEL NO. 2

13 CARL E HILBERT JR.
14 MRS. VELTA COUCH
15 HENRY JOS. DUFFY
16 TANZIE H ADAMS
17 C E GAMMAGE JR.
18 ~~PAUL V SEYDEL~~
19 B E PRICE
20 FRANCES V BAZZEL
21 ~~JESSE W LUKE~~
22 ~~CHAS. W DANFORTH~~
23 AUBREY H WOOD
24 JOE S CHANEY C 31

PANEL NO 3

25 GLEN W KIRKLAND SR. C 2
26 ROBERT A BRACE (1)
27 J Q OGLE D 1
28 MABLE DINSDALE D 2-3
29 MARION T NUNN S 1
30 E H HEATH (2)
31 MARY W CULLISON S 2
32 KATHLEEN GARNER D 3
33 WM. E FORESTER (3)
34 SAM W TURNER D 4
35 WOODROW R SHEPHERD D 5
36 J E HOOD C 3

PANEL NO. 4

37 ALEX W BRADLEY JR. (4)
38 JAMES ALLEN JOHNSON C 4
39 CHARLES R OGLETREE D 6
40 GENE H CATES (5)
41 J W CLAYTON ~~(6)~~ C 60 9-16-66
42 CHAS. A MOON S 3
43 BRUCE E ROSS D 7
44 SEABORN K JORDAN D 8
45 ALBERT L CALLAHAN C 5
46 OSWALD L MC ELROY D 9
47 WM. C BRITT C 6
48 MRS. INEZ H TUCKER C 7

PANEL NO. 5

49 MILFORD R TOWNER C 32
50 ~~H M WILLIAMS~~
51 ~~WM. L RAMSEY~~
52 ~~FRANK TAYLOR~~ C 33
53 WM. KELLY
54 ~~ROY A RICHARDS~~
55 WM. G REEVES JR. S 5
56 MRS. ~~V J LISENBY~~
57 JIMMY L HODGES JR. C 34
58 ~~RAYMOND COLLETT~~
59 ~~MRS. EMMETT STEELE~~ SR.
60 JAMES M HOLLIDAY

PANEL NO. 6

61 HULAN WEBB
62 M M BOYLE
63 JOHN B DUNCAN
64 ETHYL CARLTON
65 WADE KING SIMS
66 R L DURDEN
67 B A GUYTON JR
68 JAMES L MORRIS D 13
69 GEORGE H CONKLIN
70 MAURICE M BRANNON
71 JOSEPH C ROBERTSON
72 THOMAS L PINKERTON JR

PANEL NO. 7

73 WILLIAM W MILAM C8
74 LOUISE T HUNTER C9
75 JOHN R CRUMBLEY JR 54
76 MARTIN A OWENS D 10
77 ANNETTE L DOBBIE C 10
78 RAYMOND O GILL C 11
79 R H WILSON 3R C 1
(7) 80 L T DOYAL (7)
81 GEORGE L COWART C 12
(8) 82 JOHN T LITTLE (8)
83 H NORRIS PYE C 13
84 LEON C PARKER C 14

PANEL NO. 8

85 JAMES O (Otis E.) BURDETTE JR (Sr) C 35
(86) CHARLES W BOROUGHS C 63
(87) MAYNARD H SPIVEY C 64
88 W L CLARK JR C 36
(12) (89) HEBERT H BRUCE (12)
(90) R ALLEN REEVES C 65

(10) 91 GEORGE B COBB D 21
92 MICHAEL MORPHY (10)
(93) R O MORRIS C 61
(94) JOSEPH E WALL C 62
(95) FAY T BROWN S8
(96) COLEY TRIPP D 22

PANEL NO. 9

97 WINFIELD E SIMS D 14
98 EMORY T MONTGOMERY JR C 27
99 D C WEIGLE C 37
100 E F MC CLELLAN D 15
101 J W WELCH C 38
102 C E SCRAGGS C 39
103 C R WALKER C 40
104 ~~MRS LOUIS TAFFEL~~
105 LUCILLE L CRAWFORD C 41
106 HENRIETTA F BLACKISTONE D 16
107 GEO T JOHNSON C 42
108 ROSA MAE REEVES 56

PANEL NO. 10

109 ~~ROY W DAVIS~~
110 ~~ALBERT G HENLEY~~ JR
111 ~~J P HOLLAND~~
112 ~~R GAYLE DEAN~~
113 ~~JOE F WRIGHT~~
114 ~~L W SHIPPEY~~
115 ~~LEONARD L LOWE~~
116 ~~ALTON S CHANGE~~
117 ~~WALTER D BLACKSTOCK~~
118 ~~MRS CLAUDIA H WOODALL~~
119 ~~ROGERS M WARE~~
120 ~~W L SILCOX~~

PANEL NO. 11

121 ROBERT E BADDERS C 15

122 FRANK B WILSON

123 JOEL C MAY (9)

124 SANFORD E DAVIS C 43

125 RAYMOND F WILSON D 11

126 HELEN BUETELL C 16

127 O MORGAN HALL C 17

128 GARNETT J ENGLAND C 18

129 ROY M HONEA C 19

130 R A CRIDER C 20

131 HARVEY G BOOTH D 12

132 CARL L CLARK (11)

PANEL NO. 12

133 ~~CLARENCE D CHADWICK~~

134 ~~CLARENCE P CHRISTOPHER~~

135 ~~JAMES H WHITE~~

136 ~~JOSEPHINE S LE GRAW~~

137 ~~EDDIE LOMAX JR.~~

138 WESLEY C DUSENBERG C 24

139 ~~JOHN OTWELL~~

140 HAINES HARGRETT C 25

141 ~~JAMES EDGAR KERLIN~~

142 ~~EDWARD H CAMPBELL~~

143 ARTHUR KLOPSTOCK

144 ~~JOHN MARTIN RUFF JR.~~

PANEL NO. 13

145 E N SUMRALL C 44

146 RAY A HOWARD D 17

147 NOBLE R ROWE

148 IVEY L WOMACK C 45

149 WOODROW COX

150 JAMES BROWN

151 ASA M BARBER D 23

152 RICHARD L HOTALING C 66

153 LEONARD M WYLIE (13) 10-EX-J-66

154 CLAIRE B REED C 46

155 WM. S YOUNG (14)

156 PLEDGER W TRIBBLE JR. C 47

PANEL NO. 14

157 ROBERT L LEWIS C 29

158 HUBERT Y WILLIS JR C 48

159 R R WALLACE D 18

160 ~~ROBERT R BELLAMY~~

161 D F DE LONG C 49

162 BOBBY B DUKE C 50

163 R M BEARDEN C 51

164 JAMES A BEAVERS C 52

165 JOS. HENRY HALLMAN JR. C 53

166 R D ADAMS C 54

167 CHAS. W CLINE C 55

168 ROBERT R CHASTAIN D 19

PANEL NO. 15

169 OTIS A SMITH S 7

170 ~~JOHN C MC KENZIE~~

171 MRS. ALBERT L ~~STAND~~ STRAND (6)

172 WILBER E. CARSON C 26

173 J T MUNDY C 56

174 MERRELL BROWN D 20

175 JESSE W. ELLIOTT C 57

176 LOCKE M BARKSDALE

177 LEILA J JOHNSON

178 D S. CARTER

179 THOMAS L ELDER JR. C 58

180 CLIFFORD B FAIR C 59

## CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that two true and correct copies of the within and foregoing Petitioner's Reply Brief and Appendix, have been mailed by prepaid airmail to the HON. LEWIS R. SLATON, Solicitor General, Fulton Judicial Circuit, Fulton County Courthouse, Atlanta, Georgia, and two additional copies have been mailed by prepaid airmail to the HON. ARTHUR K. BOLTON, Attorney General of the State of Georgia, 132 Judicial Building, Atlanta, Georgia, this 2nd day of May, 1968.